

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 97/AIL/Lab./J/2010, dated 11th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.7/2006, dated 26-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Suja Rubber Industries Private Limited, Puducherry and its workman Thiru D. Rajendiran represented by Puduvai Mill Thozhilalar Sangam, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
Presiding Officer-cum-
II Additional District Judge.*

Friday, the 26th day of March 2010

I.D. No. 7/2006

The President/Secretary,
Puduvai Mill Thozhilalar Sangam,
Pondicherry. . . Petitioner.

Versus

The General Manager,
M/s. Suja Rubber Industries
Private Limited, Pondicherry. . . Respondent.

This case coming on 18-3-2010 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner and Thiru V. Govindaradjou, advocate for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following :—

ORDER

This industrial dispute has been referred *vide* G.O. Rt. No.22/2006/Lab./AIL/J, dated 7-3-2006, for adjudicating the following :—

1. Whether the demand of Puduvai Mill Thozhilalar Sangam (CITU) over non-employment of Thiru D. Rajendiran against the management of M/s. Suja Rubber Industries Private Limited is justified or not?

2. To what relief, they are entitled to?

3. To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The facts of the industrial dispute in brief are as follows :

The petitioner workman by name D. Rajendran was working in the respondent company for four years as Machine Operator. The respondent company was earning good profit but they had refused to implement the ESI and EPF in time. Hence, the employees, who met with accident, could not claim the ESI benefits and they have to approach the Labour Officer in this regard. Since the respondent failed to act in the welfare of the employees, the said D. Rajendran attempted to form a union. On coming to know the said fact, the respondent company threatened the said D. Rajendran not to form the union. In spite of the said threat, the said Rajendran attempted to form the union. Hence, the respondent union issued a show cause notice by levelling false allegation and conducted the enquiry and finally dismissed him from the service. He has conducted the domestic enquiry in a biased manner without giving any opportunity which are entitled for the delinquents as per law as well as by the principles of natural justice. Hence, he prays for reinstatement of the petitioner with full back wages.

3. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments :—

Thiru D. Rajendran was working as an Operator in the respondent company. On 23-11-2003 in the general shift, he was working in the Laboratory. One Thenmozhi, another employee was working in the stores on the same day. At about 11.30 a.m. the said Rajendran went to the store from the Laboratory without any permission and with *mala fide* intention, entered into the stores and after closing the doors of the store room, he has held the hands of Thenmozhi, who was alone in the stores and tried to misbehave with the said Thenmozhi. While she escaped from his hold and ran out of the stores, he has threatened her not to reveal anything about the incident to anybody. The Supervisor by name Selvakumar and one Kulothungan had seen her weeping and she had narrated the above incident to them.

For the said misconduct committed by the said Rajendran, he was suspended pending enquiry by an order, dated 25-11-2003 and a charge memo., dated 14-1-2004 was issued and he was directed him to

offer his explanation. Since the explanation offered by the petitioner was not found to be satisfactory, an enquiry was ordered to be conducted and one Thiru S. Murugesan, Advocate was appointed as an Enquiry Officer. The enquiry was fixed on 28-2-2004 and the enquiry was held on various dates. On 26-6-2004 the delinquent worker has appeared before the Enquiry Officer and refused to cross-examine the management witness and walked out of the enquiry. Hence he was set *ex parte* and after completing the enquiry, the Enquiry Officer has come to the conclusion that the charges framed against the said Rajendran were proved. The order of dismissal is legal, valid and binding. Hence, he prays for dismissal of the petition.

4. During enquiry, on the side of the petitioner, Ex. P1 to Ex. P5 were marked by consent. On the side of the respondent, Ex. R1 to Ex. R9 were marked by consent.

6. The point for consideration is :

Whether the dismissal of the petitioner workman by name D. Rajendran is justified or not?

7. On this point:

This reference has been made by the Government to decide whether the non-employment of the petitioner workman D. Rajendran by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statements as well as the counter.

8. On hearing both sides and on perusing the records, it reveals that the petitioner had been dismissed by the respondent. The petitioner in his claim statement averred that the domestic enquiry had not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. The Inquiry Officer has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the petitioner workman and the enquiry report has also been submitted with unjustified findings. In fact the petitioner workman has not committed any misconducts as alleged by the respondent. But the management have taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer, the management dismissed the petitioner. On the side of the petitioner, copy of the notice, dated 8-2-2005 was marked as Ex.P1, termination order issued by the respondent dated 29-9-2009 as Ex.P2, Copy of the letter sent by the petitioner dated 17-5-2004 as Ex.P3, letter dated 10-6-2004 sent to the petitioner as Ex.P4 and the copy of the letter dated 1-9-1994 sent to the petitioner as Ex. P5.

9. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquent and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioner workman had been dismissed from his services as per the principles of natural justice. Even in the domestic enquiry, the petitioner workman has been allowed to be assisted by their co-employee. Though the petitioner workman had been given fair chance to cross-examine the witnesses, who were examined on the side of the management in the domestic enquiry, he failed to utilise the same. The Inquiry Officer has rightly come to the conclusion that the charges against the petitioner workman were proved. On the basis of the report submitted by the Inquiry Officer, the petitioner workman had been terminated from his services by way of punishment for the misconduct committed by him. On the side of the respondent, entire enquiry proceedings was marked as Ex. R1, enquiry report as Ex. R2, second show cause notice issued to the petitioner, dated 13-8-2004 as Ex. R3, copy of the letter dated 17-8-2004 sent by the petitioner to the respondent as Ex. R4, copy of the letter, dated 28-8-2004 sent by the petitioner to the respondent as Ex.R5, copy of the letter, dated 1-9-2004 sent by the respondent to the petitioner as Ex.R6, copy of the letter, dated 29-9-2004 sent by the respondent to the petitioner as Ex.R7, copy of the letter sent by the petitioner to the respondent, dated 4-10-2004 as Ex. R8 and copy of the letter sent by the petitioner to the respondent, dated 10-9-2004 as Ex. R9.

10. The learned counsel for the respondent has argued that the petitioner workman had resorted to commit acts of serious misconduct, such as, misbehaviour with a female worker and that no management would tolerate such an activity of the delinquent employee. Hence, charges have been framed against him, which were proved in the domestic enquiry and in the domestic enquiry also, due opportunities and fair chances have been given as per law, which were not availed of by the petitioner workman and on the report submitted by the Inquiry Officer and on proved charges, the petitioner workman has been dismissed from his service by way of punishment of his misconduct.

11. When I peruse the domestic enquiry report Ex.R2, it is seen that the following charges have been framed against the petitioner workman:-

1. Without permission, the petitioner workman left his work spot and entered into the stores section.

2. During the working hours, the petitioner workman misbehaved with a lady, who was working in the stores section.

3. The petitioner workman acted against the respondent management.

12. Perusal of domestic enquiry report Ex.R2 further reveals that three witnesses were examined in the enquiry on the side of the management. The petitioner workman has been permitted to appear through his assistant. The petitioner workman requested the Inquiry Officer to appoint one Saravanan as his helper and the same was accepted. On the side of the respondent management, one Kulothungan was examined and the petitioner was asked to cross-examine the said witnesses. But the petitioner requested the Enquiry Officer to appoint the union leader by name Durai Arumugam to defend his case and his request was refused by them. Hence, the petitioner workman walked out of the enquiry and he was set *ex parte* and then the management witnesses were examined. Finally, the Inquiry Officer decided the enquiry against the petitioner workman that all the charges framed against him were proved.

13. The cardinal point that has to be borne in mind in every case, is whether the person concerned was given a reasonable opportunity of presenting his case and whether the authority acted fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the person concerned.

14. In this case, the petitioner workman requested the Enquiry Officer to appoint his union leader to defend his case, which was refused by him. The request could have been acceded to rather than having been rejected to detriment of the interest of the workman. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

15. Apart from that, in the enquiry proceedings, all the management witnesses have not been cross-examined by the petitioner workman. In this regard, the Hon'ble High Court in 2007(3) TLNJ 449-456 has stated as follows:-

“On appeal to the High Court it was held that failure to give opportunity to the delinquent official to cross-examine the witnesses in departmental proceedings would be fatal.”

Normally, during enquiry, the witnesses should be examined in the presence of the delinquent official after furnishing necessary documents to him. Above all, due opportunity should be given to the delinquent official to cross-examine the witnesses. In this case, the

perusal of petitioner's documents would show that no such procedure had been followed in accordance with the aforesaid regulation. The cardinal principle of natural justice '*audi alteram partem*' was thrown to winds shockingly. Pithily and precisely, I may observe that the alleged enquiry claimed to have been conducted turned out to be an ill-wind that blew no one any good, as it has to be taken as non-est in the eye of law. During arguments, nothing has been highlighted as to how the alleged enquiry could be termed as one in accordance with the basic principles of natural justice. Hence, the failure to give opportunity to the petitioner workman to cross-examine the witnesses in the domestic enquiry would be fatal.

16. The Inquiry Officer conducted and concluded the enquiry without cross-examining the witnesses and without giving opportunity to the petitioners to defend his case. Further it is to be noted that the main allegation against the petitioner workman is that he misbehaved with a co-employee by name Thenmozhi. But the said Thenmozhi has not given any complaint against the petitioner to the respondent management in this regard. The enquiry has been initiated against the petitioner workman only based on the allegation that he misbehaved with a co-worker Thenmozhi. But without getting complaint from the said Thenmozhi, the Enquiry Officer has framed charges against the petitioner workman and after completing the enquiry, he concluded that the charges against the petitioner workman were proved, which is against the law. Hence, the Enquiry Officer has not followed the principles of natural justice. Further the said Thenmozhi has not been examined as a witness in the enquiry proceedings. Therefore, it is manifest that without examining the said Thenmozhi, the Inquiry Officer was posthaste in concluding the enquiry and the Inquiry Officer should not have come to a conclusion without giving due opportunity to the petitioner workman, which is unwarranted, which shows the biasedness of the Inquiry Officer against the petitioner workman.

17. Further no witness was examined on the side of the respondent management before this court to prove that the enquiry was conducted in a neutral manner. When the learned counsel for the petitioner has contended that the enquiry was conducted for only in two or three days, it is for the respondent to prove that the enquiry was conducted in a proper manner after giving due opportunity to the petitioners. But the respondent failed to do so. Hence, neither no opportunity was given to the petitioner workman, nor principles of natural justice have been complied with in conducting the domestic enquiry. Therefore, the termination of service of the petitioner workman was bad and the petitioner, by way of producing Ex.P1 to Ex.P5, proved his case and at the same time, the

documents filed under Ex.R1 to Ex.P9 are not in any way helpful to the case of the respondent. Accordingly I conclude that the domestic enquiry was not therefore conducted in accordance with the principles of natural justice.

18. Hence, for the reasons stated above, the decision of dismissal of the petitioner workman by name D. Rajendran from the company by the respondent is an erroneous one and is also unjustified and accordingly he can get the benefit of reinstatement with full back wages and other attendant benefits.

19. In the result, the industrial dispute is allowed and the respondent/management is hereby directed to reinstate the petitioner workman by name D. Rajendran with full back wages and other attendant benefits. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 26th day of March 2010.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioner : Nil
List of documents marked by the petitioner :

| | | |
|--------|-----------|--|
| Ex. Pl | 8-2-2005 | Copy of the Notice |
| Ex. P2 | 29-9-2009 | Termination order |
| Ex. P3 | 7-5-2004 | Copy of the letter sent by the petitioner. |
| Ex. P4 | 10-6-2004 | Letter to the petitioner |
| Ex.P5 | 1-9-1994 | Copy of the letter sent to the petitioner. |

List of witnesses examined on the side of the respondent : Nil
List of documents marked by the respondent :

| | | |
|--------|-----------|--|
| EX. R1 | 28-2-2004 | Entire domestic enquiry report to 26-6-2004 |
| Ex. R2 | 27-4-2004 | Enquiry report |
| Ex. R3 | 13-8-2004 | Second show cause notice |
| Ex. R4 | 17-8-2004 | Letter sent by the petitioner to the respondent (photocopy). |
| Ex. R5 | 28-8-2004 | Letter sent by the petitioner to the respondent (photocopy). |
| Ex. R6 | 1-9-2004 | Letter sent by the respondent to the petitioner (photocopy). |
| Ex. R7 | 29-9-2004 | Letter sent by the respondent to the petitioner (photocopy). |

EX. R8 4-10-2004 Letter sent by the petitioner to the respondent (photocopy).
Ex. R9 10-9-2004 Letter sent by the petitioner to the respondent (photocopy).

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 98/AIL/Lab./J/2010, dated 11th May 2010)

NOTIFICATION

Whereas, the Award in I. D. No. 27/2003, dated 19-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. K.C. Palanisamy and Company, Puducherry and its workman represented by the Union Pondicherry KCP Thozhilalargal Sangam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L., II Additional District Judge, Presiding Officer, Labour Court, Pondicherry.

Friday, the 19th day of March 2010

I.D. No. 27/2003

The President,
Puducherry KCP Thozhilalargal
Sangam. . . Petitioner.

Versus

The General Manager,
Karur KCP Limited,
Pondicherry. . . Respondent.

This case coming on 4-3-2010 for final hearing before me in the presence of Thiru B. Mohandoss, counsel for the petitioner, Tvl. A. Anaiyappan and B. Balavijayan, advocates for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:

ORDER

This industrial dispute has been referred to as per the G.O. Rt. No. 123/Lab./AIL/J/2003, dated 4-9-2003 for adjudicating the following:-

1. To give appropriate direction on the demand of the union for the payment of terminal benefits, to the workers namely, 1. Amsaveni, 2. L. Tamizhselvi, 3. M. Papathy, 4. Thamaraiselvi, 5. Janava Mary, 6. Jayagandhi, 7. Eswari, 8. Jakira, 9. Lourthusamy, 10. Pannerselvam, 11. Arokiadhas, 12. Sridhar, 13. Ravi, 14. Rajendran, 15. Arulappan, 16. Ramesh, 17. J. Johnson, 18. K. Ravi, 19. Ayyavu, 20. Dhanraj, 21. Ravichandran, 22. Magimainathan, 23. Senthil, 24. Rosemary, 25. Vadivel, 26. Senthil Kumar, 27. Srinivasan, 28. Raja, 29. Kanappan, 30. Mani, 31. Murugadhas, 32. Selvam, 33. Gunasekar, 34. Ammachi, 35. Raja, 36. Nagamuthu, 37. Zhana Pragasam, 38. Sivakumar, 39. Mariadhas, 40. Balakrishnan, 41. Ravi, 42. Mohan, 43. Mohandhas, 44. Pilavendiran, 45. Patchiappan, 46. Senthilkumar, 47. Raja, 48. Veerasamy, 49. Sivakumar, 50. Palanivel, 51. Mahadevan, 52. Ramesh, 53. Sundaramurthi, 54. Velu, 55. Natarajan, 56. Loganathan, 57. Pazhir Muhamadhu, 58. Marijothi, 59. Valarmathi, 60. Radhika, 61. S. Tamizharasi, 62. Jayalakshmi, 63. Shanthi, 64. Kamala, 65. Susila, 66. Vijayalakshmi, 67. Filomina Mary, 68. Clara Mary, 69. Kamsala, 70. Kanimozhi, 71. Mangai, 72. Sugaswari, 73. Manimegalai, 74. Punithalakshmi, 75. Amudha, 76. Devi, 77. Rama, 78. Mary, 79. Kalyani, 80. Johnsi Rani, 81. Vanathu Susaimary, 82. Saraswathi, 83. Chitra, 84. Anchalatchi, 85. Satyakala, 86. Vali, 87. Kamali, 88. Kamaladevi, 89. Vaembu and 90. Rahima by the management of M/s. KCP Palanisamy and Company, Thattanchavady, Pondicherry?

2. To give appropriate direction on the demand of the union for bonus for the year 2000-01 and leave salary for the year at 15 days.

3. To what other relief/benefits, the said workmen are entitled?

4. To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The facts of the industrial dispute in brief is as follows:—

The petitioner union is a registered trade union working for the cause of workmen of Karur KCP Limited, Pondicherry. Originally the respondent represented

on 2-1-2001 to the Deputy Labour Commissioner, Pondicherry that their workmen were resorting to strike without any prior notice and valid reason by which, the operation of company was effected and during conciliation, the representatives of the workmen stated that they were objecting to the transfer of the business of the company at Thattanchavady, Pondicherry, as they would lose their jobs. The said conciliation ended in settlement under section 12(3) of the Industrial Disputes Act, 1947 on 3-1-2001 between the management and the workmen. Among other things, the terms of settlement stated in paragraph 2 as follows:-

“(ii) The management hereby undertakes that in respect of workmen, who have been terminated from service during the year 2000, their reinstatement will be considered on merit basis in consultation with the Deputy Labour Commissioner.”

In view of the compromise, the union undertook to resume the work with immediate effect.

Even after the above settlement, the management continued its talks to sell its factory to a new management. Hence, conciliation proceedings were initiated by the Deputy Labour Commissioner, Pondicherry and on 9-3-2001 a consensus was arrived at between the parties. As decided, the respondent management and the workmen entered into settlement under section 18(1) of Industrial Disputes Act, 1947. According to the terms of the said settlement, the management agreed to pay the retrenchment compensation under section 25(f) of Industrial Dispute Act, 1947 as well as the gratuity as per law. The total entitlement of the workman concerned was also quantified in the settlement itself. It was further stated in term No.6 that the demand of the individual workman for payment of bonus for the year 2000-2001 as well as leave salary for that year would be decided by further negotiations between the parties before the Deputy Labour Commissioner, Pondicherry after 23-3-2001, the date fixed for disbursement of the cheque amount representing the terminal benefits quantified in the settlement under term No.2.

The respondent management did not honour its commitments towards its workmen under 12(3) settlement, dated 3-1-2001. Though the respondent settled the terminal benefits of several workmen, yet claims of the following workmen were not settled and only in respect of them, the industrial disputes was raised by the petitioner union:

1. Amsavaeni, 2. L. Tamizhselvi, 3. M. Papathy, 4. Thamaraiselvi, 5. Jayagandhi, 6. Eswari, 7. Lourthusamy, 8. Rajendran, 9. Arulappan, 10. Ramesh, 11. J. Johnson, 12. K. Ravi, 13. Rosemary, 14. Vadivel, 15. Raja, 16. Kanappan, 17. Selvam, 18. Ammachi, 19. Nagamuthu, 20. Zhana Pragasam, 21. Sivakumar, 22. Mariadhas, 23. Ravi, 24. Mohandhas, 25. Pilavendiran, 26. Patchiappan, 27. Palanivel, 28. Sundaramurthi, 29. Loganathan, 30. Pazhir Muhamadhu, 31. Radhika, 32. S. Tamizharasi, 33. Shanthi, 34. Susila, 35. Vijayalakshmi, 36. Filomina Mary, 37. Clara Mary,

38. Kanimozhi, 39. Manimegalai, 40. Amudha, 41. Mary, 42. Kalyani, 43. Johnsi Rani, 44. Vanathu Susaimary, 45. Anchalatchi, 46. Satyakala, 47. Vali, 48. Kamali, 49. Kamaladevi, 50. Rahima.

There was no settlement under 18(1) of the Industrial Disputes Act between the union and the management in respect of these workmen and the settlement, dated 15-3-2001 was only in respect of several other persons. There was violation of the terms and conditions of the settlements by not making payments due thereon to the workmen concerned. Hence, the petitioner union was constrained to approach the Conciliation Officer through representation, dated 16-5-2001, for which the management submitted reply, dated 29-10-2001 and 9-1-2002 to the Conciliation Officer. It was followed by the rejoinder of the workmen, dated 23-5-2002 by the union to the Conciliation Officer. As the conciliation did not materialise in any settlement, the Conciliation Officer submitted his failure report, dated 5-7-2002 to the Government. Then the matter was referred to this court for adjudication.

4. During enquiry, Ex.P1 to Ex.P119 were marked by consent. On the side of the respondent, Ex R1 to Ex.R9 were marked by consent.

5. The point for consideration is :

Whether the workers as stated above, are entitled to get the terminal benefits, bonus for the year 2000-2001 and leave salary at the rate of 15 days?

6. On this point :

The contention of the petitioner is that the respondent management and its workmen entered into settlement under section 12(3) of the Industrial Disputes Act, 1947, in which the respondent management undertook to consider on merit basis the reinstatement of the workers, who have been terminated from service during the year 2000 in consultation with Deputy Labour Commissioner. The petitioner further contended that the respondent management and its worker entered into settlement and as per the said settlement, the respondent management agreed to pay the retrenchment compensation under section 25(F) of the Industrial Disputes Act, 1947 as well as the gratuity and the payment of bonus for the year 2000-2001 as well as leave salary for that year would be decided by further negotiations between the parties before the Deputy Labour Commissioner, Pondicherry.

7. *Per contra* the contention of the respondent is that the respondent company was closed on 28-2-2001 and the closure was accepted by all the unions in the respondent / establishment and as per the settlement, the employees, i.e. those who were on the rolls of the respondent company, at the time of the closure were legally settled by way of entering into settlement under section 18(1) of the Industrial Disputes Act.

8. This industrial dispute is for payment of terminal benefits, bonus for the year 2000-2001 and leave salary at the rate of 15 days to ninety workers. As per the claim statement, the claim is for fifty workers. It is a case of the petitioner that the said .benefits had been settled by the management for 40 workers. This fact is admitted by the respondent during the arguments.

9. The contention of the respondent is that they are not liable to pay the said benefits for fifty workers in question for the reason that they were not in service at the time of closing the unit. Section 25 O of Industrial Disputes Act, 1947 mandates that three months notice of closure should be given to the appropriate Government and to the representative of the workers. Section 25 O of the Industrial Disputes Act runs as follows:-

25 O. Procedure for closing down an undertaking.—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applied shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

10. On the side of the respondent, the closure notice was marked as Ex. R1. But perusal of Ex. R1 would reveal that the mandatory period of ninety days has not been given by the respondent. The closure notice has also not been given to the representative of the union or to the workmen, because the law expects that the workers should have prior notice about the closure of the unit, so that the worker should rehabilitate himself seeking some other employment in the event of closure of unit once for all. When this has not been followed, it is failure on the part of the management. The respondent management has chosen to pay the said benefits to 40 (forty) workers only and they have not chosen to pay the remaining 50 (fifty) workers. Equality has got to be ensured before law, particularly when the respondent has admitted that 50 (fifty) workers in question were in their employment, but their only contention is that they were not in employment at the time of closing the unit. The respondent has not produced any evidence before this court to show that the said 50 workers in question had either left service prior to the closure of the unit or terminated from the service. It is not the case of the respondent that their services have been terminated for any misconduct on their part. The documents, which were marked as Ex. R1 to Ex. R9, are not in any way helpful to the case of the respondent. On the side of the petitioners, Ex. P1 to Ex. P119. which are the ESI identity

cards of the petitioner, Employee's Pension Scheme of the petitioner, EPF slips of the petitioners and the pay slips of the petitioner and the said documents would prove that they were employees under the respondent. Therefore, the respondent management has got the responsibility to safeguard the interest of their workmen without discrimination whatsoever. It is further made clear that the respondent management should settle in the same proportion, as they have done in respect of other forty workers and there should not be any discrimination in terms of monetary benefits and the same yardstick has to be applied to all the workers. Accordingly, this point is answered.

11. In the result, the industrial dispute is allowed and the respondent/management is hereby directed to settle the terminal benefits, bonus for the year 2000-2001 and leave salary to the said fifty workers, namely 1. Amsaveni, 2. L. Tamizhselvi, 3. M. Papathy, 4. Thamaraiselvi, 5. Jayagandhi. 6. Eswari, 7. Lourthusamy. 8. Rajendran, 9. Arulappan, 10. Ramesh, 11. J. Johnson, 12. K. Ravi, 13. Rosemary, 14. Vadivel, 15. Raja, 16. Kanappan, 17. Selvam. 18. Ammachi. 19. Nagamuthu, 20. Zhana Pragasam, 21. Sivakumar, 22. Mariadhas, 23. Ravi, 24. Mohandhas, 25. Pilavendiran. 26. Patchiappan, 27. Palanivel, 28. Sundaramurthi, 29. Loganathan, 30. Pazhir Muhamadhu, 31. Radhika, 32. S. Tamizharasi, 33. Shanthi, 34. Susila, 35. Vijayalakshmi, 36. Filomina Mary, 37. Clara Mary, 38. Kanimozhi, 39. Manimegalai. 40. Amudha. 41. Mary, 42. Kalyani. 43. Johnsi Rani. 44. Vanathu Susaimary. 45. Anchalatchi, 46. Satyakala. 47. Vali. 48. Kamali, 49. Kamaladevi. 50. Rahima. However, there is no order as to costs.

Dictated to the stenographer, transcribed and typed by her, corrected and pronounced by me in the open court on this the 19th day of March 2009.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioner : Nil

List of documents marked by the petitioners :

- Ex. P1 — Copy of ESI identity card in respect of Amsaveni.
- Ex. P2 — Copy of discharge slip of Amsaveni, dated 6-12-2000.
- Ex. P3 — Copy of the contribution card of Amsaveni.
- Ex. P4 — Copy of identify card of Tamilselvi.
- Ex. P5 — Copy of Employees' Pension Scheme of Tamilselvi.
- Ex. P6 — Copy of Employees' Pension Scheme of Tamilselvi.
- Ex. P7 — Copy of Form No.3-A of Tamilselvi.

- Ex. P.8 — Copy of identity card of Papathi.
- Ex. P.9 — Copy of discharge slip of Papathi.
- Ex. P.10 — Copy of Employees' Pension Scheme of Papathi.
- Ex. P.11 — Copy of discharge slip of Tamilrasi.
- Ex. P.12 — Copy of Form No.3-A of Papathi.
- Ex. P.13 — Copy of acknowledgment card.
- Ex. P.14 — Copy of Acknowledgment card.
- Ex. P.15 — Copy of Bank Pass Book of Subramani.
- Ex. P.16 — Copy of the Employees Provident Fund Scheme of Jaya Gandhi.
- Ex. P.17 — Copy of the Employees Provident Fund Scheme of Jaya Gandhi.
- Ex. P.18 — Copy of identity card.
- Ex. P.19 — Copy of Form No. 3-A of Eswari.
- Ex. P.20 — Copy of pay slip of Lourthusamy.
- Ex. P.21 — Death Certificate of Lourthusamy.
- Ex. P.22 — Medical Certificate of cause of death of Lourthusamy.
- Ex. P.23 — Copy of ESI identity card of Rajendiran.
- Ex. P.24 — Copy of acknowledgment card.
- Ex. P.25 — Copy of the letter dated nil, sent by Regional Provident Fund Commissioner.
- Ex. P.26 — Copy of the letter dated nil, sent by Regional Provident Fund Commissioner.
- Ex. P.27 — Copy of salary certificate issued to Ramesh, dated 21-1-2000.
- Ex. P.28 — Copy of pay slip of Johnson.
- Ex. P.29 — Copy of EPF slip of Johnson.
- Ex. P.30 — Copy of pay slip of Ravi for February 2001.
- Ex. P.31 — Copy of pay slip of Rosemary.
- Ex. P.32 — Copy of ESI identity card of Rosemary.
- Ex. P.33 — Copy of acknowledgment card.
- Ex. P.34 — Copy of Identity Card of Rosemary.
- Ex. P.35 — Copy of letter, dated 9-2-2001 sent to Rosemary by Regional Provident Fund Commissioner.
- Ex. P.36 — Copy of letter, dated 29-9-2000 with cheque sent to Rosemary.
- Ex. P.37 — Copy of identity card of Vadivel.
- Ex. P.38 — Copy of ESI identity card of Vadivel.
- Ex. P.39 — Copy of acknowledgment card.
- Ex. P.40 — Copy of ESI identity card of Raja.
- Ex. P.41 — Copy of identity card of Kannappan.
- Ex. P.42 — Copy of Provident Fund slip of Kannappan .
- Ex. P.43 — Copy of Form N.3-A of Kannappan.
- Ex. P.44 — Copy of acknowledgment card.
- Ex. P.45 — Copy of Employees' Pension Scheme of Selvam.

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| Ex.P46 | — Copy of Employees' Pension Scheme of Selvam. | Ex.P79 | — Copy of letter, dated 6-8-2001 sent by Regional Provident Fund Commissioner. |
| Ex.P47 | — Copy of Form No.3-A of Selvam. | Ex.P80 | — Copy of Employee's Provident Fund Scheme of Tamilarasi. |
| Ex.P48 | — Copy of Death Certificate of Selvanayagam. | Ex.P81 | — Copy of acknowledgment card. |
| Ex.P49 | — Copy of Ration Card of Selvam. | Ex.P82 | — Copy of acknowledgment card. |
| Ex.P50 | — Copy of Birth Certificate of Rajakumaran. | Ex.P83 | — Letter, dated 3-4-2001 of Regional Provident Fund Commissioner. |
| Ex.P51 | — Copy of Birth Certificate of Premkumar. | Ex.P84 | — Copy of ESI identity card of Susila. |
| Ex.P52 | — Copy of Birth Certificate of Pradeep. | Ex.P85 | — Copy of identity card of Susila. |
| Ex.P53 | — Copy of acknowledgment card. | Ex.P86 | — Copy of ESI identity card of Vijayalakshmi. |
| Ex.P54 | — Copy of Employees' Pension Scheme of Ammatchi. | Ex.P87 | — Copy of identity card of Vijayalakshmi. |
| Ex.P55 | — Copy of Employees' Provident Fund of Ammatchi. | Ex.P88 | — Copy of pay slip of Vijayalakshmi. |
| Ex.P56 | — Copy of pay slip of Nagamuthu. | Ex.P89 | — Copy of acknowledgment card. |
| Ex.P57 | — Copy of ESI identity card of Nagamuthu. | Ex.P90 | — Copy of ESI identity card of Kanimozhi. |
| Ex.P58 | — Copy of acknowledgment card. | Ex.P91 | — Letter, dated 23-10-2001 of Regional Provident Fund Commissioner. |
| Ex.P59 | — Copy of letter, dated 3-9-2001 of Regional Provident Fund Commissioner. | Ex.P92 | — Letter, dated 4-12-2001 of Regional Provident Fund Commissioner. |
| Ex.P60 | — Copy of letter, dated 3-9-2001 of Regional Provident Fund Commissioner. | Ex.P93 | — Copy of identity card of Amutha. |
| Ex.P61 | — Copy of ESI identity card. | Ex.P94 | — Copy of pay slip of Amutha. |
| Ex.P62 | — Copy of EPF slip of Gnanaprakasam. | Ex.P95 | — Copy of ESI identity card of Mary. |
| Ex.P63 | — Copy of ESI identity card of Sivakumar. | Ex.P96 | — Copy of identity card of Mary. |
| Ex.P64 | — Copy of the acknowledgment card. | Ex.P97 | — Copy of ESI scheme of Mary. |
| Ex.P65 | — Copy of identity card of Mohandoss. | Ex.P98 | — Copy of letter, dated 22-3-2001. |
| Ex.P66 | — Copy of ESI identity card. | Ex.P99 | — Copy of ESI identity card of Kalyani. |
| Ex.P67 | — Copy of Provident Fund slip of Mohandoss. | Ex.P100 | — Copy of Form No. 3-A of Kalyani. |
| Ex.P68 | — Copy of member of family of Jayaraman. | Ex.P101 | — Copy of Employees' Pension Scheme of Kalyani. |
| Ex.P69 | — Copy of letter, dated 18-8-2003 sent by Regional Provident Fund Commissioner. | Ex.P102 | — Copy of EPF Scheme of Jansi Rani. |
| Ex.P70 | — Copy of EPF slip of Patchiappan. | Ex.P103 | — Copy of Form No.3A of Johnsi Rani. |
| Ex.P71 | — Copy of EPF slip of Patchiappan. | Ex.P104 | — Copy of Employees' Pension Scheme of Johnsi Rani. |
| Ex.P72 | — Copy of pay slip of Palanivel. | Ex.P105 | — Copy of acknowledgment card |
| Ex.P73 | — Copy of the letter, dated 23-10-2001 of Regional Provident Fund Commissioner. | Ex.P106 | — Letter, dated 1-1-2001 of Regional Provident Fund Commissioner. |
| Ex.P74 | — Copy of ESI identity card of Logaian. | Ex.P107 | — Copy of acknowledgment card. |
| Ex.P75 | — Copy of acknowledgment card. | Ex.P108 | — Copy of ESI identity card of Anchalatchi. |
| Ex.P76 | — Copy of identity card of Mohemad Basheer. | Ex.P109 | — Copy of identity card of Anjalatchi. |
| Ex.P77 | — Letter, dated 6-8-2001 of Regional Provident Fund Commissioner. | Ex.P110 | — Letter, dated 2-11-2000 of Regional Provident Fund Commissioner. |
| Ex.P78 | — Copy of Form No.3-A of Tamilarasi. | Ex.P111 | — Letter, dated 1-12-2000 of Regional Provident Fund Commissioner. |
| | | Ex.P112 | — Copy of ESI identity card of Sathiyakala. |

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| Ex.P113 | — | Copy of identity card of Sathyakala. |
| Ex.P114 | — | Copy of pay slip of Sathyakala. |
| Ex.P115 | — | Copy of acknowledgment card. |
| Ex.P116 | — | Copy of acknowledgment card. |
| Ex.P117 | — | Copy of identity card of Rahimal. |
| Ex.P118 | — | Letter, dated 9-1-2001 of Regional Provident Fund Commissioner. |
| Ex.P119 | — | Letter, dated 9-1-2001 of Regional Provident Fund Commissioner. |

List of witnesses examined on the side of the respondent : Nil

List of documents marked by the respondent :

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|-------|---|---|
| Ex.R1 | — | Closure notice sent by the respondent to Joint Chief Inspector of Factories. |
| Ex.R2 | — | Letter, dated 9-1-2002 sent by the respondent to the Conciliation Officer. |
| Ex.R3 | — | Letter, dated 24-6-2004 sent by EPF Organisation to the respondent. |
| Ex.R4 | — | Form B signed by Santhi. |
| Ex.R5 | — | Form B signed by Vani. |
| Ex.R6 | — | Form B signed by Thangamani. |
| Ex.R7 | — | Form B signed by Baskar. |
| Ex.R8 | — | Register of muster roll for the months of December, January and February, 2000. |
| Ex.R9 | — | Staff pay sheet for the month of December 2000. |

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 101/AIL/Lab./J/2010, dated 12th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 10/2004, dated 25-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. ACE Glass Containers Limited, Puducherry and Owens Bilt Thozhilalar Sangam (CITU) over non-employment of Thiru S. Muthukumarasamy has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L., II Additional District Judge.
Presiding Officer, Labour Court, Pondicherry.*

Thursday, the 25th day of March 2010

I.D. No. 10/2004

The President/Secretary,
Owens BILT Thozhilalar Sangam (CITU),
42, Cuddalore Road, Bharathi Mill Thittu,
Pondicherry. . . Petitioner.

Versus

The Senior Manager—Human Resources,
ACE Glass Containers Limited
(Presently Hindustan National
Glass India Limited),
Pondicherry. . . Respondent.

This petition coming before me for final hearing on 18-3-2010 in the presence of Thiru Durai Arumugam, President of Labour Union, representative for the petitioner, M/s. Sai Raaj Associates and Satish, Advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 18/2004/Lab./AIL/J, dated 3-2-2004 of the Labour Department, Pondicherry, to resolve the following dispute between the respondent and its workman S. Muthukumarasamy:

- (1) Whether the non-employment of Thiru S. Muthukumarasamy is justified or not?
- (2) To what relief, he is entitled to?
- (3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The case of the petitioner, in brief, is that Thiru S. Muthukumarasamy was the Secretary of the petitioner-union. Since he pestered the respondent-management to implement certain terms contained in the settlement and questioned the illegal activities of the respondent-management, the respondent management set up one Thiruvalluvar and foisted a false case against the said Muthukumarasamy and after conducting a domestic enquiry for namesake, the respondent terminated him from service. Hence, the petitioner has raised the present industrial dispute seeking reinstatement in service with full back wages.

It is further averred by the petitioner that the respondent is a monopoly company engaged in the manufacture of lakhs of glass bottles per day. The petitioner-union alone is functioning in the company since 1996 and Thiru S. Muthukumarasamy as the Secretary of the petitioner-union was responsible for getting all the benefits due to the workers from the company. A settlement for hike in wages was arrived at before the Labour Officer (Conciliation), but the respondent-management did not choose to implement the same. That apart, the respondent-management did not choose to give the yearly increment, promotion, additional workmen for extra workload. Therefore, the said Thiru S. Muthukumarasamy as the Secretary of the petitioner-union, raised an industrial dispute before the Labour Officer (Conciliation) and annoyed by the same, the respondent decided to dismiss Thiru S. Muthukumarasamy from service, for which, it instigated one of its employee Thiru S. Thiruvalluvar to act against the petitioner-union. As the said S. Thiruvalluvar acted against the interest of the petitioner-union, he was removed from the membership of the union. Taking advantage of the same, the respondent-management instigated the said Thiruvalluvar to assault S. Muthukumarasamy. As S. Muthukumarasamy was the Secretary of the petitioner-union as well as an elderly person, he did not choose to attack Thiruvalluvar, but lodged a complaint against Thiruvalluvar before the respondent-management. Instead of considering the complaint lodged by Muthukumarasamy, the respondent instigated Thiruvalluvar to lodge a complaint against Muthukumarasamy before the respondent as well as before the police. On enquiry, the police found that there was only a push and pull between them and there was no assault and as such, the police warned both of them and closed the complaint. The respondent having failed in its attempt to punish Muthukumarasamy through police, initiated domestic inquiry against him on the basis of the complaint lodged by Thiruvalluvar. During enquiry proceedings, Muthukumarasamy was not permitted to be represented by the President of the Union. The respondent-management fixed the hearing dates for the inquiry proceedings on weekly off. As there was illegality in the inquiry proceedings,

Thiru S. Muthukumarasamy did not take part subsequently in the inquiry proceedings and therefore, the respondent-management dismissed him from service. Aggrieved by the said order of dismissal, the petitioner-union filed application before the Labour Officer (Conciliation), but as the conciliation failed, the present industrial dispute was raised before this court.

3. In the counter statement filed by the respondent, it is contended that the claim statement has been filed by one Kumar and it is not known in what capacity the said Kumar has signed the claim statement. It is further contended that the individual Muthukumarasamy had earlier filed petition in Reference No. II67/2003/LO(O)/AIL, dated 2-6-2003, on same issue of non-employment before the Labour Officer (Conciliation), which was subsequently withdrawn by him and as such, the present petition is liable to be dismissed. It is contended by the respondent that there existed cordial relationship between the petitioner-union and the respondent. At the same time, it is alleged that on 13-7-2002 at about 7.30 p.m., the shift-in-charge A. Purushothaman found Muthukumarasamy sitting in the dark room and he advised Muthukumarasamy to go to his work spot. While Purushothaman was about to leave the dark room, he heard S. Thiruvalluvar crying for help. When he came near, he found Muthukumarasamy holding and strangulating the neck of Thiruvalluvar, who in turn was holding the shirt of Muthukumarasamy. Purushothaman separated both the persons and the complaint was received from Thiruvalluvar and report was received from Purushothaman and Muthukumarasamy also gave a counter complaint. Thereupon, domestic inquiry was ordered, but Muthukumarasamy having attributed bias against the Inquiry Officer failed to appear for domestic inquiry throughout. In fact, domestic inquiry was conducted by following the principles of natural justice and the said Muthukumarasamy being the Secretary of the petitioner-union ought to have behaved as a model and he ought not to have indulged in such unruly behavior and it is prayed that in any event, this court should not grant the relief of reinstatement.

4. On the side of the petitioner, the said Muthukumarasamy examined himself as P.W.1 and marked Exs.P 1 to P 6. On the side of the respondent, Exs.R1 to R30 were marked by consent.

5. *Now the point for determination is:*

“Whether the dismissal of Muthukumarasamy from service is justified? If so, whether he is entitled for reinstatement with back wages?”

On point:

6. Both sides argued and also filed their written submissions.

7. The representative for the petitioner-union argued that Thiru S. Muthukumarasamy was the Secretary of the petitioner-union and as he had been often demanding the respondent-management to meet the legitimate demands of the workmen, the respondent-management with an vindictive motive had set up an employee by name Thiruvalluvan and had enacted a drama by making Thiruvalluvan pick up quarrel with Muthukumarasamy and subsequently made Thiruvalluvan to lodge complaint before police as if Muthukumarasamy had assaulted Thiruvalluvan and the respondent also obtained a complaint from Thiruvalluvan, but as the respondent failed in its attempt to initiate criminal action against Muthukumarasamy through police, the respondent-management had conducted domestic inquiry on the basis of the complaint obtained from Thiruvalluvan and for conducting the enquiry, an outsider was appointed and as the domestic inquiry was conducted in an unfair manner, Muthukumarasamy refused to participate in the same and as such, the respondent-management in a biased manner dismissed Muthukumarasamy from service.

8. It is further argued that while the industrial dispute was pending adjudication before this court, the respondent-management filed I.A.27/2004, seeking to take up the validity of domestic enquiry as preliminary issue. As this court passed an order in the said I.A., that the issue can be decided simultaneously with the main industrial dispute, the respondent-management preferred appeal before the Hon'ble High Court in W.P. No. 21702/07 and M.P. 1/07, wherein, the Hon'ble High Court by order, dated 26-6-2007, directed this court to dispose of the I.A. within three months. Again this court passed an order that the interim application can be disposed of along with the main industrial dispute and once again the respondent-management preferred appeal before the Hon'ble High Court in W.P. No. 14444/2008 and M.P. 1/2008 and once again the Hon'ble High Court by order, dated 14-8-2008, directed to dispose of the said I.A. within three months. This court, therefore, took up the issue of validity of domestic inquiry as the preliminary issue and by order, dated 31-3-2009, disposed of the said I.A. holding that the domestic inquiry conducted by the petitioner was irregular and illegal. The petitioner submits that the respondent-management prolonged the case unnecessarily for about five years causing mental agony and torture to Muthukumarasamy. He would argue that since this court has held that the domestic inquiry conducted is not proper and legal and in as much as the respondent has not challenged the said finding, this court can very well order for reinstatement of Muthukumarasamy in service. It is further argued that even when the conciliation proceedings were pending before the Labour Officer (Conciliation), the respondent-company has terminated the services of Muthukumarasamy without obtaining the permission of the Labour Officer

and such an act of the respondent is against the provisions of sections 33(l)(a),(b) and 33(2)(a)(b) of the Industrial Disputes Act. He further argued that though Thiruvalluvan would depose that he faced domestic inquiry on the basis of the complaint given by Muthukumarasamy, no documentary proof to that effect has been produced. He would reiterate that Muthukumarasamy should be ordered to be reinstated in service with full back wages, since this court has already decided that domestic inquiry is not valid.

9. On the other hand, the learned counsel for the respondent-company argued that this is a case where one of the workmen has sought to prefer a complaint of assault against another. Ex.R5 is the complaint, dated 13-7-2002 given to respondent-management by Thiruvalluvan against Muthukumarasamy. Thiruvalluvan corroborated the contents of Ex.R5 during his evidence before the court and affirmed that he had given Ex.P9-complaint to the police. At the same time, Muthukumarasamy did not give any evidence supporting his case, particularly with regard to his complaint against Thiruvalluvan and therefore, does not encourage indiscipline. He also submitted that the jurisdiction of the Labour Court under section IIA of the Act although is a wide one, it must be judiciously exercised. In support of their argument, the petitioner-union has relied upon the decision of the Hon'ble Apex Court in *Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited and Another* [2008 (II) LLJ 945 SC]. He has also relied upon the following decisions in support of his argument on the above lines:

Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College, Vellore Association and Others [AIR 1988 SC 37]

Kerala Solvent Extractions Limited Vs. Unnikrishnan [1994(2) LLJ 888 SC]

New Shorrock Mills Vs. Maheshbhai T. Rao [1997(1)LLJ 1212 SC]

Mahindra and Mahindra Limited Vs. N.B Naravade etc. [2005(1)LLJ 1129 SC]

U.B. Gadhe and others Vs. G.M. Gujarat Ambuja Cement Private Limited [2008(1)LLJ 156 SC]

He finally submitted during argument that this court should not grant back wages automatically upon setting aside an order of termination. In support of his argument, he has relied upon the Rulings in *Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar* [2009 (I) LLJ 326 SC] and *Novartis India Limited Vs. State of West Bengal and Others* [2009 (II) LLJ 9 SC].

10. Upon hearing the arguments of both sides, this court finds that admittedly there was some misunderstanding and quarrel between two employees of the respondent-company, *viz.*, Muthukumarasamy

and Thiruvalluvar. There is no dispute that Muthukumarasamy is the Secretary of the petitioner-company. This court by order, dated 31-3-2009, passed in I.A. 27/2004 in I.D. 10/2004 after an elaborate discussion held that domestic enquiry conducted by the management was not proper. Hence, the respondent-there is no chance of victimisation as put forth by the petitioner. He would further submit that still the petitioner-union is subsisting in the company and the respondent-management has not initiated action against any of its office-bearers. He would also argue that though Thiruvalluvar has left the services of the respondent, he has still maintained the contents of the complaint to the management and the police, which would only indicate that Muthukumarasamy is at fault. He would submit that the domestic inquiry was properly held in accordance with the principles of natural justice and the petitioner-union has not produced any shred of evidence to show that Muthukumarasamy was victimised and under such circumstances, the Labour Court cannot function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry. In support of his argument, he has relied upon the *Rulings in Bengal Bhatdee Coal Company Vs. Ram Prabesh Singh and Others* [1963 (1) LLJ 291 SC] and *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others* [1976 (1) SCC 518]. Relying upon the decision of the Hon'ble Apex Court in *Hombe Gowda Education Trust and Another Vs. State of Karnataka and Others* [2006 (1) LLJ 1004 SC], the learned counsel for the respondent argued that previously, only the interest of workmen was sought to be protected with the sole object of ensuring fast industrial growth in the country, but in several recent judgments, the trend of courts is that owing to change in economic policy of the country, it is not proper to allow the employees to break the discipline with impunity. He further argued that assault and intimidation are penal offences and a workman indulging in commission of a criminal offence should not be spared only because he happens to be a Union Leader, because a Union Leader does not enjoy immunity from being proceeded within a case of misconduct and the Act management let in evidence before this court to show that domestic inquiry was proper. A perusal of the records reveals that Muthukumarasamy was not given a fair opportunity of being heard in person before he was terminated from service. The respondent-company has not denied the allegations levelled against them by the workman Muthukumarasamy. Though rule 14(ba) of the model standing orders as framed under the Industrial Employment (Standing Orders) Central Rules as adopted to Pondicherry contemplates that in the enquiry, the workman shall be entitled to appear in person or be represented by an office-bearer of a trade

union of which he is a member, the respondent-management has wantonly denied permission to Muthukumarasamy to exercise his right to be defended by the President of the Union. It is further seen that although Thiruvalluvar had lodged a complaint before police as well as before the respondent-management, he has stated before police as well as before this court that they caught hold of each other's shirt and that they compromised the matter before police. When it is a petty quarrel between two employees during work time in their work place, the respondent-company ought not to have taken the extreme step of terminating the said Muthukumarasamy alone from service, when admittedly Thiruvalluvar has not suffered even a minor injury and when he has also been spared. The petitioner-union for which Muthukumarasamy is the Secretary is the only union functioning in the company for nearly eight years and as such, it would not be fair on the part of the respondent-management to mete out a severe punishment to Muthukumarasamy alone, especially when he has been given a clean chit by the police in the criminal complaint lodged by Thiruvalluvar, since it was admitted by both Thiruvalluvar and Muthukumarasamy before police that they pulled each other by their shirts. The Inquiry Officer has not appreciated the facts and the material on record and he has passed only on *ex parte* order. There are a number of rulings of the superior courts that non-participation of a delinquent workman in domestic enquiry will not be fatal to him before the Labour Court. This court finds that the respondent has not clearly established before this court that Muthukumarasamy has committed any offence, much less warranting dismissal. Therefore, this court finds that the non-employment of Muthukumarasamy by respondent-management is not justified and consequently, Muthukumarasamy is entitled for back wages and attendant benefits. In view of the findings contra to the arguments of the respondent-company, the rulings relied upon by the respondents are not in any way helpful to the respondent's case.

This point is answered accordingly.

11. In the result, Award is passed by answering the industrial dispute to the effect that the non-employment of Thiru S. Muthukumarasamy by the respondent-company is not justified. The respondent is hereby directed to reinstate S. Muthukumarasamy in service with full back wages and attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 25th day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner :

PW.1. — 21-6-2004 Muthukumarasamy

List of witnesses examined for the respondent :

RW.1. — 2-7-2009 John Basco, Assistant Manager.
RW.2. — 4-2-2010 S.Thiruvalluvar.

List of exhibits marked for the petitioner :

Ex.P.1 — Copy of revised basic details of Technicians Annexure-C.
Ex.P.2 — Copy of enquiry notice, dated 6-8-2002.
Ex.P.3 — Copy of letter to S.Thiruvalluvar, dated 14-3-1997.
Ex.P.4 — Copy of letter to the Manager, dated 13-7-2002.
Ex.P.5 — Copy of letter to the Manager with Acknowledgment Card, dated 16-11-2002.
Ex.P.6 — Copy of letter to the K.Babu, Enquiry Officer, dated 30-9-2002.

List of exhibits marked for the respondent :

Ex.R.1 — Copy of letter from S.K.Chander, dated 8-5-2002.
Ex.R.2 — Copy of complaint from A.Prushothaman, Shift Engineer, dated 10-5-2002.
Ex.R.3 — Copy of complaint from Thiruvalluvar to Manager, dated 11-5-2002.
Ex.R.4 — Copy of complaint from P. Rajendiran to Manager, dated 11-5-2002.
Ex.R.5 — Copy of complaint from Thiruvalluvar to Manager, dated 13-7-2002.
Ex.R.6 — Copy of complaint from G.Selvaraj to Manager, dated 13-7-2002.
Ex.R.7 — Copy of complaint from A. Prushothaman, Shift Engineer, dated 13-7-2002.
Ex.R.8 — Copy of letter from N.Sridhar, Manager to the Chief General Manager, dated 17-11-2002.
Ex.R.9 — Copy of report in non-cognizable offence issued by S.H.O., Sedapet O.P., dated 15-7-2002.
Ex.R.10 — Copy of show cause notice, dated 18-7-2002
Ex.R.11 — Copy of show cause notice reminder letter with acknowledgment card, dated 22-7-2002.
Ex.R.12 — Copy of show cause notice published through notice-board letter, dated 5-8-2002.
Ex.R.13 — Copy of letter from S.Muthukumarasamy to the Manager, dated 5-8-2002.
Ex.R.14 — Copy of charge sheet-cum-enquiry to the S. Muthukumarasamy, dated 6-8-2002.
Ex.R.15 — Copy of letter from S. Muthukumarasamy to the Manager, dated 6-8-2002.
Ex.R.16 — Copy of second show cause notice, dated 6-5-2003.

Ex.R.17 — Copy of requisition letter from S.Muthukumarasamy, dated 7-5-2003.
Ex.R.18 — Copy of notice dated 8-5-2003 issued by K. Victor, Senior Manager.
Ex.R.19 — Copy of letter from S.Muthukumarasamy, dated 10-5-2003.
Ex.R.20 — Copy of order of punishment, dated 19-5-2003.
Ex.R.21 — Copy of Petition for approval under section 33 (2)(b) of Industrial Disputes Act, dated 19-5-2003.
Ex.R.22 — Copy of letter from S.Muthukumarasamy, dated 30-5-2003.
Ex.R.23 — Copy of claim statement, dated 26-6-2003
Ex.R.24 — Copy of letter from S.Muthukumarasamy, dated 11-7-2003.
Ex.R.25 — Copy of letter, dated 26-8-2003
Ex.R.26 — Copy of objection filed by the respondent before Labour Officer (Conciliation), dated 28-8-2003.
Ex.R.27 — Copy of reply statement, dated 10-9-2003
Ex.R.28 — Copy of failure of conciliation report, dated 19-11-2003.
Ex.R.29 — Copy of notification, dated 3-2-2004.
Ex.R.30 — Copy of company application petition, dated 19-3-2008.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Pondicherry.

GOVERNMENT OF PUDUCHERRY**LABOUR DEPARTMENT**

(G.O. Rt. No. 103/AIL/Lab./J/2010, dated 12th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 25/2003, dated 24-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Shasun Chemicals and Drugs Limited Vs. Shasun Drugs Employees' Union and Shasun Anna Thozhir Sanga Peravai over wage revision has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 24th day of March 2010.

I.D. No. 25/2003

1. Shasun Drugs Employees' Union (Registration No. 865/93).
2. Shasun Anna Thozhirsanga Peravai (Registration No. 1254/2001). . . Petitioners.

Versus

The General Manager,
Shasun Chemicals and Drugs Limited,
Periyakalapet, Puducherry . . . Respondent.

This petition coming before me for final hearing on 11-3-2010 in the presence of Thiru P. Chakkavarthi, General Secretary of Pattali Thozhil Sangam, representative for the petitioners' unions, Thiru K. Babu, Advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:—

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 120/Lab./J/03, dated 1-9-2003 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioners and the respondent over wage revision, *viz.*,

1. Whether the non-payment of industrial dearness allowance to the sub-staff, who are working along with other workers in the production side, by the respondent management is justified or not?
2. If not, to what relief, they are entitled to?
3. To compute the relief, if any, awarded in terms of money, if it can be so computed.
2. The petitioners have filed claim statement contending that the sub-staff and assistants as designated by the respondent management are working in workmen category right from the date of joining the production side. The employees raised a charter of demand with regard to pay anomalies, dearness allowance, non-payment of wages etc. As the respondent management did not consider their demands, the petitioners raised an industrial dispute before the Labour Officer(Conciliation) on 23-9-2002,

where the matter was kept pending for six months and ultimately a failure report was sent to the Government, on basis of which the present industrial dispute has arisen.

The petitioners would state that in the production division, one section of employees are paid wages with dearness allowance while another division are paid wages without dearness allowance. This is against the principle of "equal pay for equal work". When it was brought to the notice of the management that sub-staff and assistants are either graduates or diploma holders, two settlements were arrived at between the management and six trade unions on 13-4-1999 and 13-11-2001, as per which the respondent agreed to take up the issue within three months after the wage revision for workmen is decided. But contrary to it the respondent held negotiations only with two trade unions and despite the objection letter given by the 1st petitioner, the respondent *suo motto* arrived at a settlement without mentioning anything about dearness allowance. Therefore, the petitioners did not agree to the settlements. Before the Labour Officer (Conciliation), the respondent gave letters, dated 26-9-2002 and 17-12-2002 stating that the parties to the settlement are not members of the petitioner-unions for which the petitioner-unions on 10-3-2003, produced necessary proof and sought for cancellation of the settlements as contemplated under section 19(2) of the Industrial Disputes Act. It is further contended that law requires that a workman should be paid minimum wages which should be fair for his living and proportionate to that wage, industrial dearness allowance should be paid. But contrary to it, the respondent company shows disparity by paying dearness allowance to one section of employees and refusing dearness allowance for another section of employees. It is further averred that on 2-11-1997, the respondent management put up a notice on the notice-board calling for willingness from the staff in the prescribed form as to who prefers to change over to the workmen category and pursuant thereto, the management changed the staff to workmen category and also paid them salary with dearness allowance. The petitioners pray that some more staff have to be changed to workmen category as done earlier. The petitioners would state that by changing over to workmen category, the employees would get a difference of Rs. 909.26 in the salary for December 1997 and January 1998. The petitioners would further state that there is a difference of Rs. 1248.46 between the salary paid to a permanent employee under workmen category and an employee under assistant category. Hence, the petitioners have prayed to convert the sub-staff and assistants to workmen category and pay them full salary with

dearness allowance and to pay the arrears of dearness allowance from the date on which the employee was made permanent and to order that the alleged settlement projected by the respondent does not bind the petitioners.

3. In the counter statement filed by the respondent, it is contended that the petitioners have no *locus standi* to initiate conciliation proceedings or to raise any industrial dispute as against them since they were not espoused by a majority of the staff of the respondent. It is further contended that a settlement was already arrived at this respondent with CITU and AITUC unions who alone represented all the staff and the same was signed after elaborate negotiation and due verification of relevant records. It is further contended that as the dispute is raised under section 2(k) of the Industrial Disputes Act, it follows that the parties to the dispute should have a direct or substantial interest. In other words the concerned staff must be directly or substantially interested in the dispute and they should constitute a considerable or substantial number in the petitioners union. It is contended that the petitioners unions with a *mala fide* intentions of questioning the validity of the settlements and creating confusion among the employees have raised the industrial dispute without any basis. In fact the petitioner unions do not represent the majority of staff right from sub-staff to senior assistant and on the other hand all the staffs are enjoying the benefits under the 12(3) settlement now in force without any objection. It is contended that the salary/wage details and differences as projected by the petitioners do not depict the real picture or true details. The petitioners having lost the sight of seniority have chosen to compare the service of a senior most staff with that of a junior most staff. In fact persons who have opted for staff category are paid better and fair salary when compared to workmen category since, staff category employees get additional benefits like additional basic, additional HRA, factory allowance, medical allowance, professional development allowance apart from hike and conveyance allowance, special incentive, leave travel allowance and educational allowance. It is also contended that the demand of the petitioners union for conversion from staff to worker category is untenable.

4. In reply to the counter statement, the petitioner-unions have filed reply statement wherein they have contended that the respondent time and again rely upon the settlements, dated 5-10-2006 and 13-7-2007. These settlements should not be considered since the present industrial dispute is against those settlements. It is further contended that this court had earlier disposed of a case in I.D. 6/92 filed by all

unions against the Managing Director of SPINCO, Thirubuvanai, wherein the court ordered that dearness allowance should be paid uniformly to all category of workmen. Hence, they have prayed for an order accordingly.

5. On the side of the petitioners, Thiru P. Chakravarthi, General Secretary, Pattali Thozhil Sangam, who is the representative of the petitioners-union was examined as PW.1, through whom Ex.P1 to P9 were marked. Further, Exs.P10 to P13 were marked by consent. On the side of the respondents no one was examined, but Ex.R1 to R41 were marked by consent.

6. Now the point for determination is:

“Whether the non-payment of the industrial dearness allowance to a section of the employees of the respondent company is justified or not?”.

On point :

7. Heard both sides. A perusal of the records goes to show that the employees of the respondent company are broadly classified as workmen category and staff category. The staff category consists of sub-staff, Junior Assistant, Assistant and Senior Assistant. According to the respondent the workmen are represented by CITU, LPF, PMK, ATP and AITUC Unions, while the staffs are represented by CITU and AITUC unions. Further according to the respondent a long-term settlement under section 18(1) of the Industrial Disputes Act, 1947, was arrived at on 21-9-2002 with two unions affiliated to CITU and AITUC which represents majority of the staffs from sub-staff to Senior Assistant. The said settlement provided for substantial increase in the staff salary under various heads like additional pay, personal pay, increased LTA, shoe allowance etc. The said long-term settlement under section 18(1) of the Industrial Disputes Act was presented before the Labour Officer (Conciliation) and the matter was represented by both the unions and the management. The Labour Officer (Conciliation) after verification of the relevant records accepted the settlement *in toto* and affixed his signature, authorised it and recorded the same at the request of both the parties as contemplated under section 12(3) of the Industrial Disputes Act and that settlement was valid up to 31-3-2006 and would continue to be in force till it was replaced by a fresh agreement.

8. Therefore, even according to the respondent, it is clear that the settlements, dated 5-10-2006 and 13-7-2007 have been arrived at without the consent of petitioner-unions. It is the case of the respondent that the petitioner unions are not the representatives for the staff, though they are representatives for the workmen and therefore their consent have not been

taken. Whatever it may be, it has to be seen that the staff (sub-staff to senior assistant) are getting their pay and allowances based upon the 18(1) settlement. It is not their case that they are getting less wages or that they are not paid minimum wages etc., The main grievance of the petitioner-unions is that all the Staff category should be converted into workmen category and all the staff should be paid dearness allowance irrespective of the fact whether they are in the workmen category on the production side or they are in the staff category itself and that Industrial D.A. should not be denied to a section of the staff, when all the staff are employed in the same company premises and are responsible for the benefit and welfare of the company.

9. The learned counsel for the respondent argued that the petitioner unions cannot dictate terms for converting staff category to workmen category, since it would be the desire of the management to make such conversions by taking into consideration several factors that are favourable for such conversions. He would further submit that the petitioners union cannot seek for the payment of Industrial D.A. to staffs who are not in the workmen category on the production side, since there were no deliberations or discussions or even suggestions on that account during 18(3) settlement though the respondent granted hike in allowances for LTA, education etc., He also submitted that when once the settlement under section 18(3) of the act as been arrived at between the management and the staff represented by unions, the said settlement has to continue until a fresh settlement is arrived at on the expiry of the existing settlement and the petitioner unions cannot think of giving a go by to the settlements, dated 5-10-2006 and 13-7-2007. In support of his arguments he has relied upon the following decisions:

1. *H.P.State Electricity Board & Another Vs. Ranjeet Singh & Others [2008 STPL(LE)39866 SC].*

Labour Court under the Act can decide only the matter specified in Second Schedule - Item 6 of Second Schedule says that it deals with all matter except those covered by the Third Schedule.

2. *Haryana State Co-op.Land Development Bank Vs. Neelam [2005 STPL(LE)34775,SC].*

The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance *Sub silentio*.

3. *Amalgamated Coffee Estates Limited and Others Vs. Their Workmen and Others.[L.L.J 1965(SC)].*

Pending appeals before the Supreme Court, number of managements entering into settlement with most of their employees in regard to the matters covered by the award appealed against-Some of the unions representing some of the employees not parties to such settlement-Such employees also accepting the payments made by the managements under the terms of such settlement knowingly and voluntarily-terms of such settlement also found fair - Appeals, in the circumstances, decided in terms of such settlement.

4. *Workmen of Harrisons & Crosfield Limited Quilan(Cochin Breach) Vs. Harrisons & Crosfield Limited and Others [1969 ILLJ 46(SC)].*

Reference under Settlement Award in terms of settlement Validity - One of the issues raised relating to revision of salary-Just prior to reference management entering into a settlement with respondent 3 union settling salary and gratuity among other things-Pending adjudication, conciliation settlement effected in full and final settlement of all claims-Subsequent tripartite agreement between the management on the same terms and conditions contained in the conciliation settlement-Large majority of workmen accepting salaries and scaling down of gratuity as per settlement-Objection by a minority rejected-Award in terms of settlement upheld.

5. (i) *Barauni Refineries Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Limited & Others.*

(ii) *General Secretary Barauni Telshodha Mazdoor Union Vs. Joint Chief Labour Commissioner (Central) & Others [1991 1 LLJ 46(SC)J].*

A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority.

6. *Shri R. Balaji Singh Vs. The Hindustan Machine Tools Limited [1997 II LLJ, 484 (HC, Karnataka)].*

A settlement arrived at in the course of proceedings with a recognised majority union will be binding on all workmen of the establishment even those who belong to the minority which had objected to the same. The object is to uphold the sanctity of settlement reached with the active assistance of Conciliation Officer discourage an individual employee or a minority union from scuttling the settlement.

7. *Indian Rare Earths Limited and Another Vs. Pramod Chandra Panigrahi and Others [2005 STPC(LE) 3711SC].*

Settlement arrived at in the conciliation proceedings, is binding on all.

8. *M/s. Tata Engineering and Locomotive Company Limited Vs. Workmen [1981 STPL(LE)10877SC].*

If the settlement had been arrived at by a vast majority of the concerned workmen with their eyes open and was accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it or because the tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did.

9. *I.T.C Limited Workers' Welfare Association Vs. Management of I.T.C Limited and Others. [2002-I-LLJ-848(SC)].*

Settlement reached in course of conciliation proceeding, being product of collective bargaining, entitled to due weight and consideration- Ignoring such settlement can only be exceptional, that is, if it is unjust, or *mala fide*.

10. *Erumeli Estate Vs. Industrial Tribunal, Alleppey and Others [1962 II LLJ 144 (Kerala)].*

The fact that the other workmen were not present at the conciliation conference or were noted nominee parties to such settlement, if affects its binding nature under S.18(3) (d) of the Act: Accepting the contention that the settlement in question being the settlement arrived at in the course of conciliation proceedings was binding on all the workmen in the establishment and hence the reference in this respect was bad, held;

A conciliation agreement in respect of common matters pertaining to the employees of the establishment though settled between one union and the management will be binding under S.18(3) of the Act on the employees of the establishment

irrespective of the fact that the other employees are not members of the union which signed the settlement or that they are members of some other union which was not a party to the settlement.

11. *Mysore Kirloskar Mazdoor Sangh Vs. The Management of the Mysore Kirloskar Limited and Others[2000 LAB.I.C.2507].*

Industrial Disputes Act[14of 1947], S.18(3)-Settlement-Binding nature of -Settlement entered into between recognised union and management-Neither *mala fide* in nature nor arrived at on account of fraud, misrepresentation or concealments of acts-is binding on minority union.

12. *National Engineering Industries Limited Vs. State of Rajasthan and Others [AIR 2000, 469(SC)].*

Settlement to be preferred over adjudication: A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award.

Industrial Disputes Act (14 of 1947), Ss.10.18 Reference-made during subsistence of settlement-Validity-Settlement reached between management, the representative union and one other union during conciliation-No *mala fide* alleged- Reference made at behest of third union whose charter demand was almost identical to that of representative union-Liable to be quashed-Third union was bound by the settlement and as such it could not be said that any industrial dispute existed or was apprehended at time reference was made-Wholesale reference of all disputes in charter of demands of third union for adjudication also shows non-application of mind by State Government in making the reference.

13. *State of Haryana & Another Vs. Tilak Raj & Others [2003 LLR 823(SC)].*

Applicability of the principle-Not always easy to apply in every case-Respondents were appointed as helpers on daily wages-Writ petition filed for claiming regularisation in view of service rendered for long period and salary to be equal to regular employees-High Court allowed writ petition and held petitioners entitled to minimum of pay scale with dearness allowance.

14. *State of M.P.& Another Vs. Pramod Bhartiya and Others [1993 I LLJ, 490(SC)].*

Equal pay for equal work-Mere similarity in qualification, status and service conditions would not attract equal pay, what is important and crucial is similarity in duties, functions and responsibilities.

15. *The Mysore Paper Mills Limited Vs. Workmen of Mysore Paper Mills Limited and Another.*

Benefit of pay fixation, protection of salary, seniority etc., Parity- Candidates not found suitable for post of Plant Assistants were offered post as

Trainee operators-Evidence showed that work done by Trainee operators is different than that work done by Plant Assistants-Trainee-Operators having accepted posts and worked on those posts for long time, different pay scales extended to them are justified-Trainee operators are not entitled to benefit attached to post of Plant Assistants.

16. Food Corporation of India Worker's Union Vs. Food Corporation of India and Another. [2002 11 LLJ 267(SC)].

The Supreme Court observed that it was not a case of mere application of a legal principle to admitted facts but one which involved entering the factual arena and investigation of disputed facts.

17. P. Virudhachalam and Others Vs. The Management of Lotus Mills and Another [AIR 1998, 554 (SC)].

Settlement arrived at in course of conciliation proceedings curtailing-Is binding not only on signatory unions-But, also on workmen whose union had not signed the settlement.

18. United Labour Federation, Chennai Vs. Union of India and Others [2002 I LLJ 799(Madras)].

Policy decision-Scope of Judicial review-Policy decision taken on relevant consideration cannot be interfered with by courts-Court cannot substitute its opinion for opinion arrived at by authorities while taking decision to award contract otherwise than by normal tender/auction method.

19. Indian Overseas Bank Officers Union Vs. Indian Overseas Bank [1995 I LLJ 719(Madras)].

Since the majority of the employees of the erstwhile Bank of Tamil Nadu (E.B.O.T) have accepted the settlement *in toto*. it is not open to the petitioner's union representing 10 per cent. of the employees of E.B.O.T to challenge the said settlement. What is good for the majority is good for the minority and that is the rule of democracy. The petitioner cannot be permitted to tear the settlement in bits and pieces. The settlement has to be accepted or rejected as a whole. Here can be no midway exercise.

10. This court does not concur with the arguments submitted by the learned counsel for the respondent with regard to payment of industrial dearness allowance to one category of employees and denying dearness allowance to another category of employees. It has to be seen that in order to protect the wage against inflation, the concept of variable dearness allowance has been floated linking the minimum wage to the Consumer Price Index. The enforcement of the Act is secured at two levels. In

the central sphere, the implementation is ensured through the Office of Chief Labour Commissioner (Central) while in the State sphere it is through State Enforcement Machinery.

11. "Salary or wage" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include (i) any other allowance which the employee is for the time being entitled to: wages and fringe benefits vary considerably by industry, company size and region. Wages have two components: the basic salary and an allowance ("dearness allowance") linked to the cost-of-living index. The allowance, paid as part of the monthly salary, may be at a flat rate or on a scale graduated by income group: it often adds 60% or more to basic pay. In the organised sector, wages are often set by settlements reached between trade unions and management, but the said settlement need not specifically state about the dearness allowance, for the simple reason that dearness allowance is based on cost-of-living index and it is bound to vary from time to time in industries and it comes under the category of salary or wages. Further, dearness allowance is payable at periodic intervals depending upon the price index as announced by the Government. Therefore, the respondent cannot be heard to say that since payment of dearness allowance was not an issue included in the long-term settlement, the staff category of the respondent-company is not entitled for dearness allowance. Once the rate of dearness allowance is announced and when the respondent-company has decided to pay dearness allowance even to a single employee, it is bound by law to pay dearness allowance to each and every staff working for the company. The respondent cannot be allowed to pay dearness allowance at its whims and fancies to one section or one category of employee and denying dearness allowance to another section or another category of employee. At the same time, this court would like to make clear that the petitioners-union cannot compel the respondent-management to change a sub-staff or junior assistant, assistant or senior assistant from staff category to workmen category. It is the desire of the respondent-company to devise ways and means for such conversion. The petitioners cannot compel the respondent to convert all its employees to workmen category.

12. Hence, this court finds that the petitioners-union cannot irregularly seek for conversion from staff category to workmen category. However, the non-payment of industrial dearness allowance to the sub-staff, who are working along with other workers in the production side, or to any staff, whether they are temporary or permanent, is not justified.

This point is answered accordingly:

13. In the result, Award is passed by answering the industrial dispute to the effect that the non payment of industrial dearness allowance to the sub-staff, who are working along with other workers in the production side, is not justified. The respondent is hereby directed to pay industrial dearness allowance to all-category of staff from the date on which such allowance became due to the left-out employees.

Typed to my dictation, corrected and pronounced by me in the open court on this the 24th day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner :

PW.1. 27-3-2008 P. Chakravarthi

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

- Ex.P.1— Copy of letter, dated 21-8-2002.
- Ex.P.2— Copy of Form "L" with letter, dated 23-9-2002.
- Ex.P.3— Copy of letter, dated 10-3-2003.
- Ex.P.4— Copy of letter, dated 26-9-2002.
- Ex.P.5— Minutes of the meeting, dated 13-4-1999.
- Ex.P.6— Minutes of the meeting, dated 13-11-2001.
- Ex.P.7— Copy of notice, dated 11-2-1997.
- Ex.P.8— Pay slips (4 Nos.).
Series
- Ex.P.9— Copy of list of workers' name.
- Ex.P.10— Copy of Gazette, dated 29-8-1994.
- Ex.P.11— Copy of Gazette, dated 22-3-1994.
- Ex.P.12— Copy of Report of the Three Member Committee, dated 31-1-2002.
- Ex.P.13— Copy of Standing orders of respondent's company.

List of exhibits marked for the respondent :

- Ex.R.1— Copy of Memorandum of Settlement, dated 3-7-1998.
- Ex.R.2— Copy of Memorandum of Settlement, dated 31-7-1998.
- Ex.R.3— Minutes of the meeting, dated 13-11-2001.
- Ex.R.4— Copy of Memorandum of Settlement, dated 5-12-2001.
- Ex.R.5— Copy of Memorandum of Settlement, dated 21-9-2002.
- Ex.R.6— Copy of Memorandum of Settlement, dated 26-9-2002.
- Ex.R.7— Copy of letter issued by Shasun Thozhilalar Matrum Ozhiargal Sangam, dated 30-12-2000.
- Ex.R.8— Copy of letter issued by Shasun Chemicals Staffs Union, dated 30-12-2000.
- Ex.R.9— Copy of letter issued by Shasun Thozhililar Matrum Ozhiargal Sangam, dated 27-3-2002.
- Ex.R.10— Copy of letter, dated 17-4-2002 issued by Vice-President (Operations), Shasun Chemicals and Drugs Limited.
- Ex.R.11— Copy of letter, dated 1-6-2002 issued by Vice-President, (Operations), Shasun Chemicals and Drugs Limited.
- Ex.R.12— Copy of letter, dated 6-8-2002 issued by General Manager (Operations), Shasun Chemicals and Drugs Limited.
- Ex.R.13— Minutes of the meeting, dated 4-6-2002
- Ex.R.14— Minutes of the meeting, dated 26-6-2002
- Ex.R.15— Minutes of the meeting, dated 30-6-2002
- Ex.R.16— Minutes of the meeting, dated 30-7-2002
- Ex.R.17— Copy of letter, dated 1-6-2002 issued by Senior Manager (P&A), Shasun Chemicals and Drugs Limited.
- Ex.R.18— Copy of letter, dated 29-7-2002 issued by General Manager (Operations), Shasun Chemicals and Drugs Limited.
- Ex.R.19— Copy of letter, dated 18-9-2002 issued by General Manager (Operations), Shasun Chemicals and Drugs Limited.
- Ex.R.20— Copy of letter, dated 23-9-2002 issued by General Manager (Operations), Shasun Chemicals and Drugs Limited.

Ex.R.21— Copy of letter, dated 26-9-2002 issued by Senior Manager (P&A), Shasun Chemicals and Drugs Limited.

Ex.R.22— Copy of letter, dated 17-12-2002 issued by Senior Manager(P&A), Shasun Chemicals and Drugs Limited.

Ex.R.23— Copy of salary agreement, dated 3-6-2004.

Ex.R.24— Copy of Failure of Conciliation Report, dated 7-5-2003.

Ex.R.25— Copy of Memorandum of Settlement, dated 5-10-2006.

Ex.R.26— Copy of Memorandum of Settlement, dated 13-7-2007.

Ex.R.27— Copy of list of staff as on 13-7-2007.

Ex.R.28— Copy of pay slip for the month of (Series) August, 2007(71 Nos.).

Ex.R.29— Copy of pay slip for the month of (Series). September 2007(71 Nos.).

Ex.R.30— Copy of pay slip for the month of (Series) October, 2007(71 Nos.).

Ex.R.31— Copy of muster roll for the month of (Series) August 2007 (20 Nos.).

Ex.R.32— Copy of muster roll for the month of (Series) September 2007 (20 Nos.).

Ex.R.33— Copy of muster roll for the month of (Series) October 2007 (20 Nos.).

Ex.R.34— Copy of settlement arrears for the (Series) period 2006-07.

Ex.R.35— Copy of bank statement arrears (Series) particulars.

Ex.R.36— Copy of letter, dated 15-4-2009

Ex.R.37— Copy of letter, dated 3-10-2008

Ex.R.38— Copy of salary slip of Mahadevan for the month January 2010.

Ex.R.39— Copy of salary slip of Mohan for the month January 2010.

Ex.R.40— Copy of salary slip of Velayudam for the month January 2010.

Ex.R.41— Copy of salary slip of Arumugam for the month January 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 104/AIL/Lab./J/2010, dated 12th May 2010)
NOTIFICATION

Whereas, the Award in I.D. No.4/2009, dated 15-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Garmac Industries, Puducherry and Garmac Workers Union over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L., Presiding Officer-cum-II Additional District Judge.

Monday, the 15th day of March 2010.

I.D. No. 4/2009

The Secretary,
Garmac Workers Union,
3, Ananthamal Chathiram,
Pondy Main Road, Villianur.
Pondicherry . . . Petitioner.

Versus

The Managing Director,
Garmac Industries Limited,
No.1, Villupuram Main Road,
Villianur, Pondicherry . . . Respondent.

This case coming on 4-3-2010 for final hearing before me in the presence of Thiru V. Govindaradjou, Counsel for the petitioner, Tvl. R. llancheliyan and Ms. R. Thilagavathi, Advocates for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:—

ORDER

This industrial dispute has been referred to as per the G.O. Rt. No.48/AIL/Lab./J/2009, dated 31-3-2009 for adjudicating the following dispute:—

1. Whether the dispute raised by Garmac Workers Union against the management of Garmac Industries, Pondicherry, over non-employment of Tvl. R. Sadagopan, S. Manivannan and A. Arjunan is justified or not?

2. If justified, to what relief, they are entitled to?

3. To compute the relief, if any, awarded in terms of money if it can be so computed.

2. The facts of the industrial dispute in brief is as follows:—

The petitioner's union is a registered trade union formed for the purpose of welfare of the employees working in the respondent's establishment. There are 17 persons working at present in the respondent's establishment. In the interest and welfare of the employees of the establishment of the respondent management, the petitioner's union was started in the month of April 2007. The employees *viz.*, 1. Sadagopan, 2. Manivannan and 3. Arjunan were workers employed in the respondent's establishment since 2000. The said employees are permanent employees and they are also the office bearers of the petitioner's union.

On 8-4-2008 after the working hours, the respondent management has unlawfully carried out removal of jag and fixture mould from the factory premises. On 9-4-2008 when the employees came for their work as usual, the said machinery was found missing from the factory premises. Hence, the workers went to the Managing Director, George K. Mani and he replied that it was his establishment and that he would not answer all those questions and further he went to the extent of even threatening the employees. Hence, the petitioner was constrained to send a letter, dated 10-4-2008 to the Conciliation Officer, Labour Department in this connection, with a copy to the respondent management. As there was no reply from the respondent, the petitioner has sent another letter, dated 15-4-2008 to the Conciliation Officer with a copy to the respondent. Even after receipt of the said two letters, the respondent management has not cared to send any reply in this regard. But on the other hand on 15-4-2008 during the working hours, the respondent management, with the help of third parties, wantonly and deliberately started removing the arc welding and power cutting machines from the factory premises. The workers including the said three workmen objected to the unlawful act of removal of machineries by the management. Then to the utter surprise, the respondent management by show cause notice dated 15-4-2008, suspended the said three employees and directed them to give their reply within three days. The said three workers gave reply on 17-4-2008 to the respondent denying the

allegations made against them. Then on 21-4-2008, the respondent management sent a charge sheet against the said three employees. The management has also informed about the appointment of Thiru T. Ramalingam, Advocate as an Enquiry Officer to enquire into the said charges levelled against the said employees. The said employees requested management *vide* letter, dated 24-4-2008 to furnish a copy of the complaint, on the basis of which, the charges were levelled against them. However, the respondent has not furnished the copy of the complaint till date. The Enquiry Officer conducted the inquiry and the said Enquiry Officer submitted his report to the respondent company and based on his report, the respondent company terminated the services of the said three employees. Hence, the petitioner filed this petition praying for reinstatement of the said persons with back wages and other attendant benefits.

3. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

The workers formed a Trade Union in May 2007 and raised some demands for increase in wages and other benefits. Though the management extended the benefits as per the settlement entered into between them and the workers, a few workers, in the guise of trade union activities were in the habit of giving false complaints against the respondent on matters with which they were in no way connected and even when their service conditions were in no way affected.

Some old machines, which were lying unused, rusted and found surplus to the production capacity were sent out. On account of this, none of the workers was laid off. Three workers namely 1. Sadagopan, 2. Manivannan and 3. Arjunan physically prevented the removal of the old machines. In such a situation, a complaint was given to the police and the management was constrained to proceed legally to safeguard the plant and machinery. The said workers were placed under suspension and after domestic enquiry, their services were terminated. The domestic enquiry was conducted properly and sufficient opportunities were given to the said workers. Though the respondent gave them due opportunities to defend the case and they had not utilised the opportunities given by the Enquiry Officer. Hence, they pray for dismissal of the complaint.

5. During enquiry, on the side of the petitioner, Ex.P1 to Ex.P15 were marked by consent. On the side of the respondent, Ex R1 to Ex.R39 were marked by consent.

6. *The point for consideration is:*

Whether the dismissal of the workmen namely Sadagopan, Manivannan and Arjunan is justified or not?

7. *On this point:*

This reference has been made by the Government to decide whether the non-employment of Sadagopan, Manivannan and Arjunan by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statements and the counter.

8. On hearing both sides and on perusing the records, it reveals that the workers of the respondent *viz.*, Sadagopan, Manivannan and Arjunan have been dismissed by the respondent. The petitioner alleged averred in his claim statement that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. He has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the said workers and the enquiry report has also been submitted with unjustified findings. In fact the said workmen have not committed any misconduct as alleged by the respondent. But the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the said workmen.

9. The respondent filed a counter before this court that they have followed the principles of natural justice while charging the delinquents and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the said workmen had been dismissed from their services as per the principles of natural justice. Even in the domestic enquiry, the said workmen have been allowed to be assisted by their co-employee. Though the said workmen have been given fair chance to peruse the records as well as to cross-examine the witnesses, who were examined on the side of the management in the domestic enquiry, they failed to utilise the same. The Inquiry Officer has decided the enquiry in an *ex parte* manner and on considering the documents as well the evidences of the management witnesses, he had rightly come to the conclusion that the charges of the said workmen were proved. On the conclusion of the report submitted by the Inquiry Officer the petitioner workmen have been terminated from their services by way of punishment for the

misconduct committed by them. Hence, there is no scope to intervene in the order of this management by the Labour Court and prays for the dismissal of the reference and relied upon the following decisions:—

1. 2009 LLR 62:

Avtec Limited Vs. Superintendent of Police, Krishnagiri District and Others.

2. 2009 LLR 344:

Chairman, Ganga Yamuna Gramin Bank and Others.

3. 2009 LLR 1318:

C.N. Malla Vs. State of Jammu and Kashmir and Others.

4. 2009 LLR 113:

Novartis India Limited Vs. State of West Bengal and Others.

5. 2009 LLR 1:

U.P. State Electricity Board Vs. Laxmi Kant Gupta

6. 2008 LLR 449:

Board of Directors, H.P.T.C. and Another.

7. 2009 LLR 1057:

Blecco Lawrie Limited and Another Vs. State of West Bengal and Another.

10. At this stage when I peruse the domestic enquiry report relating to the workmen, we can understand that the said workmen were advised to participate in the enquiry, which was scheduled to be conducted on 6-5-2008 at 9.30 a.m. at M.P.M. Guest-house. But the said workmen did not participate in the enquiry proceedings and they sent a letter, dated 1-5-2008 requesting the management to furnish the copy of the complaint, based on which, the charge sheet was issued to them. Since the copy of the said complaint has not been furnished to the said workmen, they have not participated in the enquiry proceedings and the Enquiry Officer proceeded to conduct the enquiry proceedings in an *ex parte* manner. On the side of the respondent management, two witnesses were examined in the enquiry against the said workmen and the said witnesses have not been cross- examined by the said workmen. Based on the evidence of the said witnesses, the Inquiry Officer held that all the charges framed against them are proved. But in the inquiry report submitted by the Inquiry Officer, he concluded the enquiry upon the testimony of the witnesses examined on the side of the management and on

considering the exhibits marked in the enquiry by the management. The Inquiry Officer stated in his enquiry report that on perusing the old records the delinquents are in a habitual manner against the management and on considering the antecedents of the delinquents also, he has come to the conclusion as the charges levelled against the said workmen proved by the management. This kind of conclusion upon the antecedents of the said workmen by the Inquiry Officer is not within the scope of the enquiry and the Inquiry Officer should not have come to a conclusion upon the antecedents of the said workmen as the scope of enquiry was for the alleged misconduct and not for past conduct of delinquent employee. Therefore, the report shows the bias of the Inquiry Officer against the delinquents.

10. At this juncture since the Inquiry Officer himself concluded the charges in a biased manner in the domestic enquiry, we need not go into the sustainability of the charge. Upon the biased enquiry report alone, the management also acted to dismiss their employees, which is against the principles of natural justice.

11. Further the contention of the petitioner is that the said employees by their letter, dated 24-4-2008, requested the respondent to furnish a copy of the complaint, on the basis of which, charges were levelled against them, but the respondent has not furnished the same and proceeded with the enquiry in an *ex parte* manner, which is total violation of the principles of natural justice.

12. On the other hand, the learned counsel for the respondent would contend that when the sole proprietor of the factory himself was assaulted, it is not possible to give any complaint to a higher authority within the factory.

13. It is a fundamental principle that both sides should be heard "*audi alteram partem*" *i.e.*, hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice *i.e.*, a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Generally, a notice to be adequate must contain the following:

1. Time, place and nature of hearing;
2. Legal authority under which hearing is to be held;
3. Statement of specific charges, which a person has to meet.

14. In this case, the petitioner was served with notice under Ex.P13, dated 29-4-2008. In Ex.P13, the date of enquiry is mentioned as 6-5-2008. When the enquiry was scheduled to be conducted on 6-5-2008, it is for the respondent to send the notice to the said workmen well in advance so as to prepare themselves to defend the enquiry proceedings. But the material on record would show that the said workmen had not been furnished with proper notices intimating them the date, time and place of hearing well before time.

15. The main contention is that the charge sheet was bad as it did not mention specifically the abusive language used by the said workmen.

16. On the side of the respondent, the charge sheet was marked as Ex.P7. Ex.P7 would reveal that the said workmen indulged in violent acts and abused the owner and other managerial staff in the factory using filthy language, insubordination. But the alleged word, which was used by the workmen, as stated by the respondent, is not mentioned in Ex.P7. In the enquiry proceedings, two witnesses, who have been examined on the side of the respondent management, have also not spoken about the alleged filthy language used by the workmen. In fact they have not spoken anything about the alleged filthy language and they have simply stated that the said workmen made quarrel with the factory owner. Hence, the contention of the learned counsel for the petitioner that the charge sheet was bad as it did not mention specifically the abusive language used by the respondent is correct. The decisions cited by the learned counsel for the respondent are not applicable to the present facts and circumstances of the case. Therefore, the decision of dismissal of the workmen namely 1. Sadagopan, 2. Manivannan and 3. Arjunan from the company by the respondent is an erroneous one and is also unjustified and they can get the relief *viz.*, benefit of reinstatement with full back wages and other attendant benefits with continuity of service from the management/respondent accordingly. I decide this point in favour of the petitioner and as against the respondent.

17. In the result, the industrial dispute is allowed and the respondent/ management is ordered to reinstate the workmen namely 1. Sadagopan, 2. Manivannan and 3. Arjunan with full back wages and other attendant benefits with continuity of service and without cost.

Dictated to the stenographer, transcribed and typed by her, corrected and pronounced by me in the open court on this the 15th day of March, 2010.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioners: Nil.

List of documents marked by the petitioners:

- Ex.P1— Copy of the letter, dated 10-4-2008 sent by the petitioner to the Conciliation Officer.
- Ex.P2— Copy of the letter, dated 15-4-2008 sent by the petitioner to the Conciliation Officer.
- Ex.P3— Copy of the show cause notice, dated 15-4-2008 sent to Arjunan.
- Ex.P4— Copy of the letter, dated 16-4-2008 sent by the petitioner.
- Ex.P5— Copy of the letter, dated 17-4-2008 sent by Arjunan.
- Ex.P6— Copy of the charge sheet, dated 21-4-2008
- Ex.P7— Copy of the letter, dated 24-4-2008 sent by Arjunan.
- Ex.P8— Copy of the letter, dated 29-4-2008 sent by the Enquiry Officer.
- Ex.P9— Copy of the letter, dated 30-4-2008 sent by Arjunan.
- Ex.P10— Copy of the enquiry report sent to petitioner, dated 6-5-2008.
- Ex.P11— Copy of the letter, dated 14-5-2008 sent to Arjunan.
- Ex.P12— Copy of the acknowledgment card.
- Ex.P13— Copy of the acknowledgment card.
- Ex.P14— Copy of the enquiry report, dated 9-6-2008.
- Ex.P15— Copy of the letter, dated 16-6-2008 sent by the petitioner.

List of witnesses examined on the side of the respondent: Nil

List of documents marked by the respondent:

- Ex.R1— Copy of suspension order, dated 15-4-2008 sent to Sadagopan.
- Ex.R2— Copy of suspension order, dated 15-4-2008 sent to Manivannan.
- Ex.R3— Copy of suspension order, dated 15-4-2008 sent to Arjunan.
- Ex.R4— Copy of the letter, dated 17-4-2008 sent by Sadagopan.
- Ex.R5— Copy of the letter, dated 17-4-2008 sent by Manivannan.

- Ex.R6— Copy of the letter, dated 17-4-2008 sent by Arjunan.
- Ex.R7— Copy of the charge sheet, dated 21-4-2008 sent to Sadagopan.
- Ex.R8— Copy of the charge sheet, dated 21-4-2008 sent to Manivannan.
- Ex.R9— Copy of the charge sheet, dated 21-4-2008 sent to Sadagopan.
- Ex.R10— Copy of the letter, dated 24-4-2008 sent by Sadagopan.
- Ex.R11— Copy of the letter, dated 24-4-2008 sent by Manivannan.
- Ex.R12— Copy of the letter, dated 24-4-2008 sent by Arjunan.
- Ex.R13— Copy of the letter, dated 29-4-2008 sent by Enquiry Officer.
- Ex.R14— Copy of the letter, dated 29-4-2008 sent by Enquiry Officer.
- Ex.R15— Copy of the letter, dated 29-4-2008 sent by Enquiry Officer.
- Ex.R16— Copy of the letter, dated 30-4-2008 sent by Conciliation Officer to Sadagopan.
- Ex.R17— Copy of the letter, dated 30-4-2008 sent by Conciliation Officer to Manivannan.
- Ex.R18— Copy of the letter, dated 30-4-2008 sent by Conciliation Officer to Arjunan.
- Ex.R19— Copy of the enquiry report, dated 6-5-2008.
- Ex.R20— Copy of the enquiry report, dated 6-5-2008
- Ex.R21— Copy of the enquiry report, dated 6-5-2008.
- Ex.R22— Copy of the letter, dated 14-5-2008 sent by Sadagopan.
- Ex.R23— Copy of the letter, dated 14-5-2008 sent by Manivannan.
- Ex.R24— Copy of the letter, dated 14-5-2008 sent by Arjunan.
- Ex.R25— Copy of the enquiry report, dated 19-5-2008.
- Ex.R26— Copy of the enquiry report, dated 19-5-2008.

Ex.R27— Copy of the enquiry report, dated 19-5-2008.

Ex.R28— Copy of show cause notice, dated 9-6-2008 sent to Sadagopan.

Ex.R29— Copy of show cause notice, dated 9-6-2008 sent to Manivannan.

Ex.R30— Copy of show cause notice, dated 9-6-2008 sent to Arjunan.

Ex.R31— Copy of the letter, dated 14-6-2008 sent by Sadagopan.

Ex.R32— Copy of the letter, dated 14-6-2008 sent by Manivannan.

Ex.R33— Copy of the letter, dated 14-6-2008 sent by Arjunan.

Ex.R34— Copy of termination order, dated 20-6-2008 sent to Sadagopan.

Ex.R35— Copy of termination order, dated 20-6-2008 sent to Manivannan.

Ex.R36— Copy of termination order, dated 20-6-2008 sent to Arjunan.

Ex.R37— Enquiry report, dated 3-6-2008

Ex.R38— Copy of the letter, dated 15-4-2008 sent by Satyanarayana Carriers.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF HINDU RELIGIOUS
INSTITUTIONS AND WAKF

(G. O. Ms. No. 19/CHRI/T.4/2010, dated 26th May 2010)

ORDER

In exercise of the powers conferred under sub-section (1) of section 4 of the Puducherry Hindu Religious Institutions Act, 1972, the Government hereby appoint Thiru R. Selvarajan, Store-keeper Grade-III, Oulgaret Municipality, Puducherry, as Special Officer to Sri Muthu Vazhi Mariamman Thirukoil, Lawspet Main Road, Pakkamudayanpet, Puducherry *vice* Thiru V. Kumar, Agricultural Officer, K.V.K., Puducherry.

Thiru R. Selvarajan, Store-keeper Grade-III, Oulgaret Municipality, Puducherry, shall take over the administration of Sri Muthu Vazhi Mariamman Thirukoil, Lawspet Main Road, Pakkamudayanpet, Puducherry, with all its movable and immovable properties, records etc., and shall look after affairs of the temple in addition to his existing duties. He shall comply with the provisions contained in the Puducherry Hindu Religious Institutions Act, 1972 and the rules made thereunder.

(By order of the Lieutenant-Governor)

R. ARUNACHALAM,
Under Secretary to Government (Temples).

GOVERNMENT OF PUDUCHERRY
HEALTH SECRETARIAT

(G.O. Ms. No. 45, dated 27th May 2010)

NOTIFICATION

On attaining the age of superannuation, Dr. M. Muthaiyan, Chief Medical Officer (NFSG) officiating as Insurance Medical Officer, ESI Dispensary, Ariyankuppam, Puducherry, is admitted into retirement with effect from the afternoon of 31-5-2010.

(By order of the Lieutenant-Governor)

S. THAMMU GANAPATHY,
Under Secretary to Government (Health).

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (EDUCATION)

(G.O. Ms. No. 67, dated 28th May 2010)

NOTIFICATION

The resignation tendered by Dr. Himanshu Sekhar Rout, Assistant Professor in Economics, Dr. S. R. K. Government Arts College, Yanam, in order to take up appointment to the post of Reader in Economics, in Utkal University, Bhubaneshwar, Orissa is accepted with immediate effect, with lien for a period of two years.

(By order of the Lieutenant-Governor)

M. GUNASEKARAN,
Under Secretary to Government (Education).